

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Jacob N. Georgiefski-Rios,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



July 3, 2024
Court of Appeals Case No.
23A-CR-2578
Appeal from the Porter Superior Court
The Honorable Mary A. DeBoer, Judge
Trial Court Cause No.
64D05-2208-F1-6703

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

[1] After pleading guilty to Level 1 child molesting, Jacob Georgiefski-Rios was sentenced to 40 years, with 5 years suspended to probation. The trial court imposed the terms of probation at sentencing without any complaint from Georgiefski-Rios. He now suggests for the first time on appeal that several of these terms are improper. Because he never brought this issue to the attention of the trial court, we find he has waived any error in the probation terms. We therefore affirm.

Facts

[2] Georgiefski-Rios performed oral sex on a 13-year-old girl in his home while a second girl videotaped the offense. Georgiefski-Rios also was alleged to have grabbed the buttocks of the second girl and to have provided a marijuana vaping device to both girls. He ultimately was charged with Level 1 felony child molesting, Level 5 felony child solicitation, and class A misdemeanor contributing to the delinquency of a minor.

[3] The State and Georgiefski-Rios entered into a plea agreement specifying that he would plead guilty to Level 1 felony child molesting and receive a sentence of up to 50 years imprisonment. The charges of child solicitation and contributing to the delinquency of a minor—as well as an unrelated domestic battery charge—would be dismissed. The plea agreement also contained an appellate waiver provision:

I waive all right to appeal my conviction and/or my sentence imposed, and/or the manner in which my conviction and/or my sentence was/were determined or imposed on any grounds in this case.

App. Vol. II, p. 48.

- [4] The trial court accepted the plea agreement and sentenced Georgiefski-Rios to 40 years imprisonment, with 5 years suspended to probation. Georgiefski-Rios waived the court's reading of the standard terms of probation. The trial court then read to Georgiefski-Rios the special terms of probation for sex offenders applicable to him. When asked whether he understood those terms, Georgiefski-Rios replied, "Yes, Your Honor." Tr. Vol. II, p. 106.
- [5] Two weeks later, Georgiefski-Rios wrote to the trial court to request appointment of appellate counsel. At the hearing on this request, Georgiefski-Rios told the court that he wished to appeal because he discovered errors in the sentencing paperwork. When the court asked him to specify those errors, Georgiefski-Rios stated that the court had erroneously found that two girls watched him molest the victim when only one girl watched. Georgiefski-Rios mentioned no other errors, including alleged defects in the probation conditions.
- [6] The trial court questioned whether the appellate waiver in the plea agreement precluded the appeal but ultimately appointed appellate counsel. On appeal, Georgiefski-Rios challenges only the terms of his probation.

Discussion and Decision

[7] Georgiefski-Rios contends the trial court erroneously imposed two of the standard terms of probation and one of the special terms of probation for sex offenders. In response, the State seeks dismissal of this appeal, arguing that Georgiefski-Rios waived his right to challenge any portion of his sentence, including the terms of his probation. The State also raises a second, narrower waiver claim: that Georgiefski-Rios waived any errors in the probation conditions by failing to first present these errors to the trial court. We find this second waiver issue dispositive and thus do not address the other arguments in this appeal.

[8] A cornerstone of appellate review is that alleged errors generally must be raised in the trial court before they may be argued on appeal. The rationale for this rule is that a trial court often can correct an error if it timely learns of it. *C.S. v. State*, 131 N.E.3d 592, 601 (Ind. 2019). “[T]his can result in enormous savings in time, effort and expense to the parties and the court, including avoiding an appeal and retrial.” *Id.* (quoting *Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013)).

[9] Exceptions to this rule exist. For instance, fundamental error—which Georgiefski-Rios does not raise—may be reviewed for the first time on appeal. *See, e.g., Dunn v. State*, 230 N.E.3d 910, 914-19 (Ind. 2024) (finding a jury instruction containing language unchallenged by the defendant fell within the fundamental error doctrine, a narrow exception to waiver). Some sentencing errors also may be reviewed on appeal without the defendant first bringing the

error to the trial court's attention. *See, e.g., Anglemeyer v. State*, 875 N.E.2d 218, 220 (ruling that a defendant may argue for the first time on appeal that the trial court overlooked the defendant's guilty plea as a mitigating circumstance).

[10] We find waiver here because Georgiefski-Rios's acquiescence in any error exceeded mere silence at his sentencing hearing. He affirmatively waived the trial court's reading of the standard terms of probation—a move that suggests he was aware of those terms and did not contest them. And when the court asked Georgiefski-Rios whether he understood the special terms of probation for sex offenders that the court had just read, Georgiefski-Rios responded affirmatively. He never informed the court that the probation terms were vague or overbroad or otherwise inappropriate, as he now describes them on appeal.

[11] During the hearing on his request for appellate counsel, Georgiefski-Rios had yet another opportunity to bring the allegedly defective probation terms to the trial court's attention. When asked by the trial court to specify his sentencing error allegations, Georgiefski-Rios did not mention the probation terms. The first time that Georgiefski-Rios disclosed any concerns about these terms was in his appellant's brief months later.

[12] “[A] party may not sit idly by, permit the court to act in a claimed erroneous manner, and then attempt to take advantage of the alleged error at a later time.” *Knight v. State*, 155 N.E.3d 1242, 1251 (Ind. Ct. App. 2020) (quoting *Robles v. State*, 705 N.E.2d 183, 187 (Ind. Ct. App. 1998)). Under these unique circumstances, we find that Georgiefski-Rios has waived any error in the

probation terms by repeatedly failing to alert the trial court to the error. Accordingly, we affirm the trial court's judgment.

Mathias, J., and Tavitas, J., concur.

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